

**IN THE UNITED STATES BANKRUPTCY COURT
FOR NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

LOUIS A. TELERICO

DEBTOR.

CASE NO. **17-50236-amk**

CHAPTER 11

JUDGE ALAN M. KOSCHIK

**STATE OF OHIO, DEPARTMENT OF
TAXATION'S OBJECTION TO
DEBTOR'S PLAN OF
REORGANIZATION VERSION 1.3**

The State of Ohio, Department of Taxation ("ODT") by and through special counsel, hereby objects to confirmation of the Debtor's Plan of Reorganization Version 1.3 (the "Plan") (ECF Doc. No. 114). For the reasons stated below, Debtor's Plan cannot be confirmed.

I. Priority Tax Claims

While Section 2.3 of the Plan now includes a recitation of the proper treatment for priority tax claims pursuant to 11 U.S.C. § 1129(a)(9)(C), the provision continues to assert that there are no Priority Tax Claims against the estate and that the amount of Priority Tax Claims are presently unknown. ODT has timely filed Proof of Claim No. 10, which includes priority tax claims. These claims are prima facie valid. 11 U.S.C. § 502(a); Fed.R.Bankr.P. 3001(f). Debtor has neither filed an objection to these claims nor amended his Adversary Complaint, in A.P. No. 18-05008, to challenge these claims as he advised the Court on several occasions that he planned to do. Debtor's assertion that he was either going to file an objection or amend the adversary is the only reason that ODT dropped its objection to the inclusion of this language in the Disclosure Statement.



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Because ODT's priority claims are prima facie valid and because Debtor has not objected to those claims, the Plan cannot be confirmed with language stating that no priority claims exist. ODT requests that the Court order any assertion that no priority claims exist be struck from the Plan and that Section 2.3 be limited to stating the proper treatment under Section 1129(a)(9)(C).

II. Treatment of ODT's Secured Claim

The Plan does not provide for payment of ODT's secured claim. Provision 3.1 of the Plan does not explicitly reference ODT's secured claim, however the "Treatment" of "Class 4 – Unsecured Claims" references "Claims that were originally secured by the Debtor's Home other than Classes 1, 2, or 3, and all other unsecured claims." (ECF Doc. No. 114, p. 4). This language is apparently a reference to Adversary No. 18-05008, wherein the Debtor has challenged ODT's secured claim. However, that adversary is still ongoing. Without the completion of the adversary, this language, paired with the failure to provide for the payment of ODT's secured claim, violates of Rule 3012(c) as an attempt to avoid the secured claim of a governmental unit through a Plan rather than by motion, claim objection, or adversary as required. Until the adversary is completed, any attempt to avoid ODT's secured claim through the Plan is impermissible and therefore the Plan cannot be confirmed.

Furthermore, the plan cannot be confirmed over ODT's objections pursuant to 11 U.S.C. § 1129(b)(2) as a non-consensual plan. For a Chapter 11 plan to be confirmed over the objection of a secured creditor, the plan must meet one of three requirements in order to be deemed "fair and equitable" with respect to the nonconsenting creditor's claim. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 643–44, 132 S.Ct. 2065, 2069–70, 182 L.Ed.2d 967 (2012). The plan must provide:



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(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A). The Plan does not provide any one of the above treatment in regard to the State of Ohio's lien. In fact, the Plan provides that the Debtor's real property will be transferred free and clear of the tax liens to him and his wife personally, presumably stripping the State of Ohio's lien, as well as the liens of others like the IRS, and leaving it in the position of a wholly unsecured creditor. The proposed discharge of ODT's lien is improper, and the Court should adequately protect the secured claim of ODT until a ruling is made in a proper proceeding concerning the validity of the lien.

III. Incorporation of the Objection of the Internal Revenue Service

The State of Ohio's secured claim in this matter is being treated similarly under the Plan as that of the Internal Revenue Service. Therefore, ODT hereby adopts and incorporates the objections of the IRS as recently stated in its objection to confirmation, ECF Doc. No. 128.



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IV. Conclusion

For the Reasons above, the State of Ohio, Department of Taxation respectfully requests that the Court deny confirmation of the Plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 3, 2018, a true and correct copy of the foregoing was served via the court's Electronic Case Filing System on these entities and individuals who are listed on the court's Electronic Mail Notice List:



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